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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GARY KREMEN, an individual,
Plaintiff,
v.
STEPHEN MICHAEL COHEN, an individual,
et al.
Defendants.

Case No.: C 98 20718 JW PVT

**DECLARATION OF RICHARD J.
IDELL IN SUPPORT OF
PLAINTIFF'S MOTION FOR LEAVE
OF COURT TO FILE MOTION FOR
RECONSIDERATION OF JUNE 17,
2010 ORDER**

Honorable Judge James Ware, Presiding

I, Richard J. Idell, do state as follows under penalty of perjury:

1. I am an attorney at law licensed to practice all of the courts of this state and the attorney of record for plaintiff Gary Kremen ("Plaintiff" or "Kremen") in the above action. All of the matters set forth herein are of my own personal knowledge and if sworn as a witness I could and would testify competently as to the matters stated herein.

1 2. Attached hereto as Exhibit "A" is a true and correct copy of pages 1, 2 and 20
2 through 24 of the transcript of proceedings held before the Court in this action on November 14,
3 2005.

4 3. Attached hereto as Exhibit "B" is a true and correct copy of pages 1, 2, 22, and 34
5 through 37 of the transcript of proceedings held before the Court in this action on December 4,
6 2006.

7 4. Attached hereto as Exhibit "C" is a true and correct copy of the Court's December
8 5, 2006 Order in this action, being Docket No. 1244.

9 5. Attached hereto as Exhibit "D" is a true and correct copy of the Court's February
10 27, 2007 Order in this action, being Docket No. 1259.

11 6. Attached hereto as Exhibit "E" is a true and correct copy of the minutes for the
12 Court's August 7, 2007 hearing in this action, being Docket No. 1329. At the hearing, the Court
13 set a date for Cohen's debtor examination of October 1, 2007, to be held in San Diego,
14 California. For various reasons, the examination did not go forward on that date, and Plaintiff's
15 counsel contacted Cohen to reschedule the examination. Cohen would not agree to appear unless
16 witness fees were paid.

17 7. Attached hereto as Exhibit "F" is a true and correct copy of Cohen's "Notice of
18 Revocation and Agreement to Appear at a Judgment Debtor's Examination in San Diego,
19 California and a Notice of Revocation of a Waiver of Rule 4(f) Service as Required Under the
20 Federal Rules of Civil Procedures [*sic*]," filed in this action on February 21, 2008, being Docket
21 No. 1354. That notice purported to explain that between the time the judgment debtor's
22 examination was to have taken place (October 1, 2007) and the rescheduled date sought by
23 Plaintiff's counsel, Cohen had moved to Mazatlan, Mexico and was revoking (1) any prior
24 examination was to have taken place (October 1, 2007) and the rescheduled date sought by
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26 examination was to have taken place (October 1, 2007) and the rescheduled date sought by
27 Plaintiff's counsel, Cohen had moved to Mazatlan, Mexico and was revoking (1) any prior
28

1 agreement to appear for deposition outside of “the jurisdiction of [his] residence” and (2) any
2 prior waiver of service of process.

3 8. In response to Cohen’s February 21, 2008 filing, on February 26, 2008, Plaintiff
4 was forced to file a motion to enforce Cohen’s previously-ordered appearance for a judgment
5 debtor’s examination. By notice of the Clerk dated March 4, 2008, hearing was set for March
6 31, 2008. Attached hereto as Exhibit “G” is a true and correct copy of the March 4, 2008 Clerk’s
7 Notice Setting Motion Hearing, being Docket No. 1360.

8
9 9. Attached hereto as Exhibit “H” is a true and correct copy of the Court’s March 11,
10 2008 Order in this action, being Docket No. 1364. The Court’s March 11, 2008 Order denied
11 Cohen’s ex parte application for permission to appear telephonically for the hearing scheduled
12 for March 31, 2008, noting that “the proceedings include a debtor’s examination which must be
13 conducted personally.”

14 10. Attached hereto as Exhibit “I” is a true and correct copy of Cohen’s “Ex Party
15 [sic] for Motion for Reconsideration, or in the Alternative for (1) an Order Ordering Plaintiff to
16 Advance Fees per Title 28 USC § 1821; or in the alternative for an Order Authorizing the United
17 States Marshal to Transport Cohen So He Will Not Be Held in Contempt,” filed in this action on
18 March 11, 2008, being Docket No. 1365. Cohen’s ex parte application claims that he “does not
19 have the funds to transport himself to court” and that he would have no objection to “a
20 stipulation ONE TIME for a ‘JD Examination’ without process of service to take place in
21 Mazatlan, Mexico on a date and time certain set by the court[.]”

22
23 11. Attached hereto as Exhibit “J” is a true and correct copy of Cohen’s “Petition for
24 an Emergency Writ of Mandamus (FRAP 21),” filed in this action on March 20, 2008, being
25 Docket No. 1370-2. Attached hereto as Exhibit “K” is a true and correct copy of Cohen’s
26 declaration in support of the said “Petition for an Emergency Writ of Mandamus (FRAP 21),”
27

1 and the exhibits thereto, filed in this action on March 20, 2008, being Docket Nos. 1370-4 and
 2 1370-5. Cohen's petition requests that the appellate court determine whether a district court
 3 judge can "order a Defendant in a civil case to appear 2000 miles from his place of residence
 4 based upon a perjurious application for a JD Examination." Cohen's declaration in support of
 5 the petition again states that he is "without the necessary funds to travel at [his] own expense."

6 12. Attached hereto as Exhibit "L" is a true and correct copy of Cohen's "Agreement
 7 to Be Served Through E-mail," filed in this action on March 20, 2008, being Docket No. 1370-6.
 8 This purported "agreement" was "only valid for this specific Emergency Writ of Mandamus filed
 9 with the Ninth Circuit Court of Appeals." The email address listed by Cohen was
 10 "mrstephenmcohen@yahoo.com". On March 27, 2008, the Ninth Circuit denied Cohen's
 11 petition.
 12

13 13. Attached hereto as Exhibit "M" is a true and correct copy of the Court's March
 14 28, 2008 Order in this action, being Docket No. 1372. The March 28, 2008 Order granted
 15 Plaintiff's motion to take Cohen's judgment debtor's examination and ordered Cohen to appear
 16 in San Jose, California at 9:00 a.m. on April 7, 2008. The Court's March 28 Order specifically
 17 notes the following:
 18

- 19 1. A foreign defendant may be required to face a Debtor Examination within
- 20 the jurisdiction of the court in which the money judgment was entered;
- 21 2. Cohen is not a prevailing party entitled to fees; and
- 22 3. Cohen's representations that he is a resident of Mexico conflict with
- 23 previous representations that he would make himself available for a
- 24 Debtor Examination in San Diego, California and receive service of
- 25 documents through the Court's electronic filing system.

26 14. Cohen appeared before the Court on April 7, 2008, as ordered. Attached hereto as
 27 Exhibit "N" is a true and correct copy of Cohen's "Corrected Notice of Appearance at Judgment
 28

1 Debtor's Examination Pursuant to this Court's Order and a Declaration of Stephen Michael
2 Cohen of Errata, Corrections, and Additions," filed in this action on April 8, 2008, being Docket
3 No. 1377.

4 15. On May 14, 2010, Plaintiff applied *ex parte* to again take Cohen's judgment
5 debtor's examination. The Court granted the application on May 21, 2010, ordering Cohen to
6 appear on June 28, 2010 at 9:00 a.m. Attached hereto as Exhibit "O" is a true and correct copy
7 of the Court's May 21, 2010 Order in this action. The Court's May 21 Order also provides that
8 Plaintiff "personally serve Steven Teich, Esq. on behalf of Stephen Cohen in compliance with
9 the Court's December 4, 2006 Order[.]" In apparent response to service of the Court's May 21
10 Order, Mr. Teich filed two declarations and a request for approval of substitution of attorney
11 dated December of 2006. Mr. Teich's June 10, 2010 declaration makes a general request that he
12 be relieved "of any responsibility to act on Mr. Cohen's behalf[.]"
13

14 16. Attached hereto as Exhibit "P" is a true and correct copy of the Court's June 17,
15 2010 Order in this action. The Court's June 17, 2010 Order: (1) vacated the Court's May 21
16 Order and (2) vacated the June 28, 2010 judgment debtor's examination. The Court's June 17,
17 2010 Order states that those orders "are without prejudice to Plaintiff to renew the Motion once
18 the proper agent of service for Defendant Cohen has been identified."
19

20 I declare under penalty of perjury that the foregoing is true and correct and that this
21 declaration was executed on the 30th day of July, 2010 at San Francisco, California.
22

23 /s/ Richard J. Idell

24 Richard J. Idell